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SIPDIS

SENSITIVE

DEPT FOR AF/E, AF/EPS, INL/C/CP, EB/ESC/TFS  
JUSTICE FOR AFMLS, OIA, AND OPDAT  
TREASURY FOR FINCEN  
TREASURY FOR VIRGINIA BRANDON

SIPDIS

E.O. 12958: N/A  
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SUBJECT: Charterhouse Bank Winding Down

Ref: Nairobi 1026

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¶1. (SBU) Summary: The Appeals Court rejected Charterhouse Bank's appeal of High Court rulings supporting the Central Bank of Kenya (CBK), which will next advise the Minister of Finance to finalize his Ministry's refusal to renew Charterhouse's license. Charterhouse Bank may still try to appeal to the Supreme Court, but the bank seems unlikely to ever resume operations. End summary.

#### Court Rejects Charterhouse's Appeal

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¶2. (U) In early December, the Ministry of Finance informed Charterhouse Bank that it did not plan to renew the bank's license in 2007, and asked for its statutory response. On March 9, the Court of Appeal upheld the High Court's denial of Charterhouse Bank's claim the Central Bank of Kenya's (CBK) appointment of a statutory manager to run the bank was illegal, and demand that the bank should be reopened under its own management.

#### Inadequate Charterhouse response

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¶3. (SBU) A CBK official told Econoff on March 12 that CBK had found Charterhouse Bank's response to the notice on license non-renewal and the evidence in the PriceWaterhouseCoopers audit completely inadequate. Now that the Appeals Court had ruled in favor of the CBK, the CBK will "soon" forward its determination to the Ministry of Finance so the Ministry may send the final non-renewal notice to Charterhouse Bank. He hoped the decision would be conveyed soon so the statutory manager and the CBK could begin the process of winding down Charterhouse and paying off the innocent depositors.

¶4. (SBU) A senior Kenya Revenue Authority (KRA) official informed Econoffs in late February that KRA had negotiated a deal under which Nakumatt Supermarkets, one of Charterhouse's major customers, would pay a certain amount of the estimated taxes it had evaded through Charterhouse Bank's juggling of accounts. Although KRA had accepted that Nakumatt would not admit any guilt in the agreement, Nakumatt pulled back, and resumed wrangling over the amount to be paid. Thus, while Nakumatt is now paying its taxes, the back tax bill and Nakumatt's potential legal vulnerability are still in contention. Other Charterhouse customers who evaded taxes may be waiting for the outcome before making their own deals.

Comment

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15. (SBU) It is risky in Kenya to declare any game is really over. However, it appears former CBK Governor Andrew Mullei, his acting replacement Jacinta Mwatela, their staff at CBK, and the whistleblowers who collected the initial evidence, have won a victory after three years of struggling against Charterhouse's wealthy, politically influential, and ruthless owners and customers. The CBK can claim most of the credit for pursuing the investigation and withstanding Charterhouse's many law suits, since KRA, the Kenya Anti-Corruption Commission (KACC) and the Ministry of Finance provided little support, and the media was often silent. Although there is little sign yet that any criminal charges will be filed against the bank's managers or customers, the fact that former acting Governor Mwatela got the loudest round of cheers at the Ambassador's International Woman's Day reception demonstrates that Kenyans regard closing Charterhouse Bank as a notable accomplishment.

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